

FILED

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

2012 JUN 29 P 3:37

NETAIRUS SYSTEMS LLC,

Plaintiff,

v.

HONORABLE DAVID J. KAPPOS,
in his official capacity as UNDER SECRETARY
OF COMMERCE FOR INTELLECTUAL
PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND
TRADEMARK OFFICE

Defendant.

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

Civil Action No. 12 CV 709
AJT/JFA

**COMPLAINT FOR REVERSAL OF DECISION OF
THE UNITED STATES PATENT AND TRADEMARK OFFICE
PATENT TRIAL AND APPEAL BOARD**

Plaintiff NetAirus Systems LLC alleges as follows:

1. This civil action is brought pursuant to 35 U.S.C. § 145 against the Director of the United States Patent and Trademark Office seeking a judgment that Plaintiff is entitled to receive a patent for the invention specified in the claims involved in a decision of the Board of Patent Appeals and Interferences (now known as and referred to hereinafter as the "Patent Trial and Appeal Board").

THE PARTIES

2. Plaintiff is a limited liability company organized and existing under the laws of the State of California and having a business address of 307 Surrey Drive, Bonita, California. Plaintiff is the owner by assignment from the named inventor Richard J. Ditzik of U.S. Patent Application Serial No. 11/023,361 ("the '361 patent application"), filed December 29, 2004, and

entitled "Desktop Computer Conferencing System." A true and correct copy of the '361 patent application is attached hereto as Exhibit A.

3. Defendant David J. Kappos is the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office. Director Kappos is sued in his official capacity as Director of the United States Patent and Trademark Office pursuant to 35 U.S.C. § 145.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 because this is a civil action arising under the laws of the United States and relating to patents, including the United States Patent Act, 35 U.S.C. § 101 *et seq.* This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 35 U.S.C. § 145 (as amended September 16, 2011, by the America Invents Act).

5. This Court has authority to review the decision of the Patent Trial and Appeal Board and to authorize the Director of the United States Patent and Trademark Office to issue Mr. Ditzik a patent pursuant to 35 U.S.C. § 145.

6. Venue is proper in this District pursuant to 35 U.S.C. § 145 and 28 U.S.C. § 1391(e).

FACTS GIVING RISE TO THE COMPLAINT

7. The '361 application is directed to a pioneering invention in the field of computer data conferencing systems.

8. Claims 17, 19, 20, 22-24, and 27-37 in the '361 patent application were rejected by the patent examiner in a final Office Action dated November 21, 2008.

9. Mr. Ditzik appealed the rejection of the claims in the '361 patent application to the Patent Trial and Appeal Board in Appeal No. 2009-014097. In a decision dated December 2, 2011, the Patent Trial and Appeal Board affirmed the patent examiner's rejection and entered new grounds of rejection.

10. Mr. Ditzik then requested a rehearing by the Patent Trial and Appeal Board. In a decision dated May 2, 2012, the Patent Trial and Appeal Board declined to modify its prior decision.

11. Plaintiff is dissatisfied with the decision of the Patent Trial and Appeal Board in Appeal No. 2009-014097.

12. Upon information and belief, the Patent Trial and Appeal Board committed clear error, *inter alia*, in interpreting the plain meaning of certain claim elements, in interpreting the teachings of certain prior art references, and in its application of the governing patent law to the claims of the '361 patent application.

13. This action has been commenced within two months of the decision of the Patent Trial and Appeal Board on Mr. Ditzik's request for rehearing.

14. No appeal to the United States Court of Appeals for the Federal Circuit has been taken from the decision of the Patent Trial and Appeal Board.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Declare, adjudge, and decree that Plaintiff is entitled to receive a patent for the subject matter claimed in the '361 patent application.

- B. Order the Director of the United States Patent and Trademark Office to issue a patent for the subject matter claimed in the '361 patent application, pursuant to 35 U.S.C. § 145.**
- C. Grant such other and further relief as the nature of the case may admit or require and as may be just and equitable.**

Dated: June 29, 2012

Respectfully submitted,

NETAIRUS SYSTEMS LLC

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